

CITY AND COUNTY OF SAN FRANCISCO



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February 3, 2023

Via ECF Delivery

Hon. Judge Jeffrey S. White
Oakland Courthouse
Courtroom 5 – 2nd Floor
1301 Clay Street, Oakland, CA 94612

Re: *Jose Guardado, et al. v. City and County of San Francisco et al.*
United States District Court – Northern District
Case No. 4:22-cv-04319-JSW

Thaddeus Saleem Shaheed, et al. v. City and County of San Francisco et al.
United States District Court – Northern District
Case No. 4:22-cv-06013-JSW

Denise Angelina DeBrunner, et al. v. City and County of San Francisco et al.
United States District Court – Northern District
Case No. 4:22-cv-07455-JSW

David Gozum v. City and County of San Francisco et al.
United States District Court – Northern District
Case No. 4:22-cv-03975-JSW

Selina Keene et al. v. City and County of San Francisco et al.
United States District Court – Northern District
Case No. 4:22-cv-01587-JSW

Joseph Cook. v. City and County of San Francisco et al.
United States District Court – Northern District
Case No. 4:22-cv-07645-JSW

CITY AND COUNTY OF SAN FRANCISCO

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Honorable Jeffrey S. White
Page 2
February 3, 2023

Dear Honorable Judge White:

The City and County of San Francisco (the “City”) is a defendant in each of the above-listed related actions challenging the City’s COVID-19 Vaccination Policy on religious grounds.

Plaintiffs in the putative class action, *Guardado, et al. v. City & County of San Francisco*, No. 4:22-cv-04319-JSW, recently filed a motion to consolidate that action with *Shaheed, et al. v. City & County of San Francisco*, Case No. 4:22-cv-06013-JSW. As a courtesy to the Court and to provide notice to the plaintiffs in each of the related actions, the City’s response to the *Guardado* Plaintiffs’ motion to consolidate is attached.

Very truly yours,

DAVID CHIU
City Attorney

/s/ Lauren E. Wood

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cc: All Counsel via ECF

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 CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

JOSE GUARDADO, MELISSA BORZONI,
 ANDREW MALONEY, ROMMEL
 TAYLOR, PENNI EIGSTER, TARA
 AMADO, and DANIELLE BOLOGNA on
 behalf of themselves and all other similarly
 situated persons,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
 FRANCISCO; and DOES 1 through
 100,

Defendants.

Case No. 4:22-cv-04319-JSW

**DEFENDANT CITY AND COUNTY OF SAN
 FRANCISCO'S RESPONSE TO PLAINTIFF
 JOSE GUARDADO'S MOTION TO
 CONSOLIDATE CASES 4:22-CV-04319-JSW
 AND 4:22-CV-06013-JSW**

Date Action Filed: July 26, 2022
 Trial Date: Not Set

THADDEUS SALEEM SHAHEED,
 JESSE MURILLO, RICARDO TREJO,
 and PHILIPPE J. CABRAL,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
 FRANCISCO; and DOES 1 through
 100,

Defendants.

Case No. 4:22-cv-06013-JSW

Date Action Filed: October 12, 2022
 Trial Date: Not Set

Defendant City and County of San Francisco’s Response to Motion to Consolidate

The City and County of San Francisco (the “City”) submits the following response to Plaintiffs Jose Guardado, Melissa Borzoni, Andrew Maloney, Rommel Taylor, Penni Eigster, Tara Amado, and Danielle Bologna’s (collectively “Guardado Plaintiffs”) Motion to Consolidate the putative class action they filed, *Guardado, et al. v. City & County of San Francisco*, No. 4:22-cv-04319-JSW (“*Guardado Class Action*”), with *Shaheed, et al. v. City & County of San Francisco*, No. 4:22-cv-06013-JSW (“*Shaheed Action*”).

The City does not dispute that the Complaints filed in the *Guardado Class Action* and the *Shaheed Action* are virtually identical, with the exception of the class allegations included in the former and those allegations relating specifically to the named plaintiffs. Both actions challenge the City’s COVID-19 Vaccination Policy on the same legal grounds and the City agrees that consolidation would likely conserve party and judicial resources. The *Guardado Class Action* and the *Shaheed Action*, however, are only two of six pending federal cases challenging the City’s COVID-19 Vaccination Policy that have been related and assigned to this Court.¹ In light of these four other related actions, the Guardado Plaintiffs’ Motion to Consolidate only the *Shaheed Action* is premature and fails to address the broader case management and coordination issues presented by these related actions.

A brief description of each of the other four actions follows:

- *Keene, et al. v. City & County of San Francisco*, No. 4:22-cv-01587-JSW (“*Keene Action*”): Action by three former City employees challenging the City’s COVID-19 Vaccination Policy on religious grounds, alleges violation of Title VII and FEHA for failure to provide religious accommodation due to the City’s denial of plaintiffs’ request for religious exemptions from the City’s Vaccination Policy.

¹ On November 10, 2022, the Court issued an order relating the *Keene Action*, the *Gozum Action*, the *Guardado Class Action*, and the *Shaheed Action*. *Keene Action*, No. 4:22-cv-01587-JSW, Dkt. 44. On January 24, 2023, the *Cook Action* was related to the *Guardado Class Action*, No. 4:22-cv-04319-JSW, Dkt. 32. On February 1, 2023, the *Debrunner Action* was related to the *Keene Action*, the first-filed federal case challenging the City’s Vaccination Policy. *Keene Action*, No. 4:22-cv-01587-JSW, Dkt. 48.

1 Plaintiffs' appeal of the Court's denial of their motion for preliminary injunction is
 2 currently pending before the Ninth Circuit.

- 3 • *Gozum v. City & County of San Francisco*, No. 4:22-cv-03975-JSW (*Gozum* Action):
 4 Action by former City employee challenging the City's COVID-19 Vaccination Policy
 5 on religious grounds, alleges violation of Title VII and FEHA for failure to provide
 6 religious accommodation due to the City's denial of plaintiff's request for religious
 7 exemption from the City's Vaccination Policy.
- 8 • *Debrunner, et al. v. City & County of San Francisco, et al.*, No. 3:22-cv-07455-JSW
 9 ("*Debrunner* Action"): Action by approximately 135 current and former City
 10 employees challenging the City's COVID-19 Vaccination Policy on religious grounds,
 11 alleges violation of the First Amendment (Section 1983 claim), Title VII and FEHA for
 12 failure to provide religious accommodation due to the City's denial of plaintiffs'
 13 request for religious exemption from the City's Vaccination Policy. Plaintiffs also bring
 14 disability discrimination and ADA claims based upon denial of approximately eight
 15 plaintiffs' requests for medical exemptions from the City's Vaccination Policy.
- 16 • *Cook v. City & County of San Francisco*, No. 4:22-cv-07645-JSW ("*Cook*" Action):
 17 Action by former City employee challenging the City's COVID-19 Vaccination Policy
 18 on religious grounds, alleges violation of the First Amendment (Section 1983 claim),
 19 Title VII and FEHA for failure to provide religious accommodation due to the City's
 20 denial of plaintiff's request for religious exemption from the City's Vaccination Policy,
 21 as well as wrongful termination and breach of the collective bargaining agreement
 22 between the City and plaintiff's labor union.

23 As the City advised counsel for the *Guardado* Class Action and the *Shaheed* Action when first
 24 notified that the *Guardado* Plaintiffs intended to seek consolidation with only the *Shaheed* Action,
 25 issues related to case coordination, including potential consolidation, should be addressed during the
 26 initial case management conference on March 24, 2023,² to ensure that *all* parties in the related actions

27 ² The *Guardado* Class Action, the *Shaheed* Action, and the recently related *Cook* Action are all
 28 set for an initial case management conference on March 24, 2023 at 11:00 a.m. The City intends to

and their counsel may be heard on these issues. Global consideration of case coordination and consolidation issues is necessary given that the plaintiffs in each of the related actions³ appear to fall within the *Guardado* Class Action's proposed class definition:

All employees presently or previously employed by San Francisco (1) who have been ordered to submit to a COVID-19 vaccination, (2) who have submitted a written request for a religious accommodation, and (3) whose requests were denied due to a finding of a lack of religious sincerity and/or due to the claim that granting a religious accommodation would pose an undue hardship on San Francisco.

Guardado Class Action, Dkt. 1 at ¶ 15.

Accordingly, the City respectfully requests that the Court defer ruling on the *Guardado* Plaintiffs' Motion to Consolidate and instead address case coordination and consolidation issues with all parties at the upcoming March 24, 2023 case management conference.

Dated: February 3, 2023

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By: /s/ Lauren E. Wood
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seek orders from the Court resetting the initial case management conferences in the other related actions to the same date by stipulation or by administrative motion, if necessary.

³ According to the Complaint, all but two of the 135 plaintiffs in the *Debrunner* Action sought religious exemptions from the City's COVID-19 Vaccination Policy. *Debrunner* Action, No. 3:22-cv-07455-JSW, Dkt. 1 at ¶ 144.